IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WA.No. 2229 of 2007

(AGAINST THE JUDGEMENT IN WPC.33646/2005 Dated 06/06/2007)

APPELLANTS/ RESPONDENTS 6 AND 7 IN THE WRIT PETITION
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1. MANGALY TIMBERS,
   PALAKKAD.
   (WRONGLY DESCRIBED IN THE WRIT PETITION AS
   MANGALYA TIMBERS, MALAPPURAM).

2. MANGALY INDUSTRIES,
   PALAKKAD.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
ADV. SMT.S.LAKSHMY

RESPONDENTS/ RESPONDENTS 1 TO 5, 8 TO 14 AND THE PETITIONER:
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1. THE ADDITIONAL SALES TAX OFFICER,
   HOSDURG,
   KASARAGOD DISTRICT.

2. THE SPECIAL DEPUTY TAHSILDAR (RR),
   HOSDURG,
   KASARAGODE DISTRICT.

3. THE SUPERINTENDENT OF POLICE,
   KASARAGOD.

4. THE MANAGER,
   SOUTH INDIAN BANK LTD.,
   FEROKE P.O., KOZHIKODE.

5. M/S.HILL WOOD INDUSTRIES,
   RAMANTTUKARA,
   KOZHIKODE.

6. M/S HILL WOOD IMPORTS AND EXPORTS PVT LTD.,
   FEROKE,
   KOZHIKODE.

7. M/S.NATIONAL TIMBER TRADERS,
   PILATHARA.

8. P.AHAMMEDKUTTY AND COMPANY,
   KADAMPUZHA ROAD,
   PETTA,
   FEROKE, KOZHIKODE.

9. DEPUTY COMMISSIONER (APPEALS),
   COMMERCIAL TAXES, KOZHIKODE.

10. THE SALES TAX APPELLATE TRIBUNAL,
    ADDITIONAL BENCH, KOZHIKODE.

11. THE DIRECTOR,
    VIGILANCE AND ANTI CORRUPTION BUREAU,
    THIRUVANANTHAPURAM.

12. THE COMMISSIONER OF COMMERCIAL TAXES,
    TRIVANDRUM.

13. P.MOIDEEN,
    PROPRIETOR,
    AL-AMEEN WOOD INDUSTRIES,
    KANHANGAD P.O.,
    KASARAGOD DISTRICT.

BY GOVERNMENT PLEADER SHRI K.B. PRADEEP.
R13 BY SHRI V.P. SUKUMAR.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 2229 OF 2007

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Dated this the 25th September , 2007

J U D G M E N T

H.L. Dattu, C.J.:

Respondent Nos. 6 and 7 in the Writ Petition (C)No. 33646 of 2005 are the appellants in this appeal.

2. The appellants only question a portion of the order passed by the learned single Judge while disposing of the Writ Petition, by order dated 06.06.2007. The offending portion, that is pointed out by the learned counsel for the appellants, is extracted below:

> *"Petitioner's specific case is that respondents 5 to 10 accounted their unaccounted purchases as made from petitioner by using Form 18 issued in the name of the petitioner without his knowledge.* ***Pursuant to enquiry on these allegations under orders of this Court, petitioner's claim was substantially found to be correct."*** *(emphasis is supplied.)*

3. Thereafter, the learned single Judge has directed the Commissioner of Commercial Taxes to nominate a person as the appellate authority for disposal of the appeals pending against the assessment orders for the assessment years 2001-02, 2002-03 and 2003-04.

4. We have heard Shri V.V. Asokan, learned counsel appearing for the appellants, Shri K.B. Pradeep, learned Government Pleader for the Revenue

and Shri V.P. Sukumar, learned counsel appearing for the petitioner in the Writ Petition/13th respondent herein.

5. Shri V.V. Asokan, learned counsel appearing for the appellants would submit that while relegating the parties to the appellate authority, there was no reason for the learned single Judge to have expressed an opinion on the merits of the case pleaded by the petitioner as well as the respondents in the Writ Petition. Therefore, the learned counsel requests us to expunge the aforesaid observation made by the learned single Judge in the course of the impugned order.

6. In the instant case, the petitioner/13th respondent herein was before this court inter alia questioning the recovery proceedings initiated by the assessing authority for realisation of the arrears of tax for the assessment years 2001-02, 2002-03 and 2003-04. It was the case of the petitioner/13th respondent herein before this court that respondents Nos. 5 to 10 in the Writ Petition had misused his name and also Form 18 and therefore, he is in no way liable for payment of arrears of tax for the aforesaid assessment years.

7. The learned single Judge has not gone into the merits of the case. But, has directed the appellate authority to be nominated by the Commissioner of Commercial Taxes to dispose of the appeals filed by the petitioner and others against the assessment orders. In our opinion, while doing so, there was no reason for the learned single Judge to have expressed any opinion on the merits of the contentions canvassed by the petitioner in the Writ Petition. Therefore, that portion of the order passed by the learned single

Judge , which would come in the way of respondents 6 and 7 in the Writ Petition/appellants before us , requires to be expunged from the order passed by the learned single Judge. Therefore, the following:

O R D E R

i) The Writ Appeal is disposed of.

ii) The offending portion in the order passed by the learned single Judge is expunged.

iii) Now the appellate authority, to be nominated by the Commissioner of Commercial Taxes, is directed to decide the appeals filed by the petitioner in the Writ Petition/13th respondent herein, as well as others , on merits without reference to any one of the observations made by the learned single Judge .

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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